Levensbeëidiging bij pasgeborenen en gemeenschappelijke moraal. Een ethisch-theoretische evaluatie

Zwiers, Maria Johanna

Summary

The purpose of this research is to find an ethical-theoretical framework which satisfies the following conditions:

1. the starting point of this framework is shared morality, which plays a significant role;
2. it can be used to assess the termination of life of newborns (by termination of life I mean killing and letting die).

All the authors who have taken the termination of life as the subject of their research take a pluralism of moral beliefs as their starting point, from there they look it in various ways for solutions. In their arguments and in their proposals for solutions they account - to a greater or lesser extent - for this pluralism of moral beliefs. Although these authors do not deny shared morality - in their arguments and solutions remnants of shared morality can be found -, shared morality is not done full justice in their writings. In other words, this morality is not given independent significance.

This research aims to find an ethical theory that does not deny pluralism of moral beliefs, but that assigns shared morality a place and a significance of its own. Once found, that theory will be applied to the assessment of the termination of life of newborns.

The termination of life of newborns is the medical-ethical problem central to this research. In addition, in a wider context the ethical-theoretical framework is also applied to the termination of life of children, the mentally handicapped, patients who are in a persistent vegetative state and to late termination of pregnancy.

In chapter 2 the first step in the research is made, i.e. making explicit what shared morality constitutes with reference to the termination of life of newborns. 'Shared morality' is taken to mean: morality that is not subject to discussion. It consists of norms and values that are not questioned in public discussions.

One should look for the shared morality in and around the discussion about the termination of life of newborns, for in the arguments and solutions of participants to the debate remnants of shared morality can be found. A problem in this search is the fact that the discussion is opaque, because it is polemical. It is therefore necessary to neutralise any tendentiousness. To that purpose four strategies are revealed, from which it appears that we are agreed on at least a number of issues. Thus we agree on the fact that there is a limit beyond which there should be no (more) treatment. Yet we also agree that there is a limit beyond which there should be treatment. And although many advocate that parents have a say, no one would welcome a situation in

which parents put themselves above their child. We all think that parents should want the best for their children. No one wishes a slippery slope; no one considers it desirable to accept involuntary euthanasia in the near future. We fear the idea of a child that is 'custom-made'.

In chapter 3 the search begins for an ethical-theoretical framework within which shared morality is given a place and a meaning of its own and with which the termination of life of newborns can be evaluated. It is explored whether Ten Have - an ethicist who puts pluralism of moral beliefs into perspective - offers such a framework.

Ten Have is part of a group of ethicists who resist applied ethics. A report is given of the discussion that developed between the adherents of applied ethics and Ten Have's group. From the report it appears that it is unfortunate that the aforementioned ethicists consider it necessary to discuss which sort of ethics deserves preference, for several ways of practicing ethics can very well coexist.

The report also makes clear that Ten Have does not offer the right framework. He explicitly does not intend to solve problems, so his framework clearly does not comply with the second condition.

The fourth chapter contains a summary of the theory of Kekes, as discussed in *Moral Tradition and Individuality* (1989), *Facing Evil* (1990), and *The Morality of Pluralism* (1993). In his theory Kekes attributes an important place to shared morality; moreover, he shows how conflicts can be approached and solved. As for the former, Kekes poses that shared values form an important part of a moral tradition. The necessity of maintaining a balance between moral tradition and individuality is - thus Kekes asserts - the essence of good lives. Individuals aspire to live good lives; the moral tradition they are a part of guides them in that desire. A moral tradition offers various models for such good lives, but also limits the ways that are permissible to achieve those lives. However, a moral tradition is not an uncomfortable suit we may put on for the sake of propriety but a repository of ideals of good lives, ideals that have stood the test of time. Moreover, a moral tradition supplies us with a shared identity.

As for the solution to the conflict: solving a problem is more than deciding what to do in a given situation, according to Kekes. One also needs to consider the consequences of the various solutions, the consequences for the entire system of values of which the problem is a part. The problems we encounter occur within certain traditions. This system of values in the background is important to all of us and it is vital that this system remains. Because we are all connected through values that are more important than the issue dividing us, problems are less insurmountable than they seem. When searching for solutions we are guided by an articulation of our shared

values and by our assessment of the effect the various solutions have on those values.

Before Kekes' theory can be applied to the termination of life of newborns, it must be examined whether it can withstand criticism. Therefore chapter 5 is dedicated to criticism. An important objection against Kekes' theory could come from the realm of rational-universalistic ethics. Kekes believes in conventions, in the existence and retaining of shared morality present in a society (without, however, excluding the possibility and desirability of (certain) changes). Yet the adherents of rational-universalistic ethics oppose existing (shared) morality - certainly when euthanasia of newborns is concerned. Their criticism of Kekes is rejected, using as the most important counterargument the assertion that these ethicists cannot themselves avoid particularity (neither on a theoretical level, nor on the level of a concrete problem).

In the sixth chapter the important shared values concerning the termination of life of newborns are articulated. In the termination of life of newborns two conventions are the most important: the convention of 'living' and the convention of 'avoiding (the infliction of) pain'.

The problem of the termination of life of newborns can be subdivided into two parts: one concerns a conflict between 'living' and 'avoiding (the infliction of) pain'. Sometimes a baby needs to suffer or one needs to inflict pain to keep it alive. In such cases a conflict between incommensurable and incompatible values arises: living (with pain) cannot be compared to not living (without pain); moreover, in cases of possible termination of life the choice between living (with pain) is incompatible with not living (without pain). To realise both values simultaneously - living without pain - is impossible in situations in which the termination of life might be considered.

The other part of the problem concerns the boundaries of the convention 'living'. Some babies - anencephalics - are allowed to die, but not because they would suffer so much if they stayed alive. These anencephalic babies cannot suffer. The conflict between 'living' and 'avoiding (the infliction of) pain' does not apply to them. The babies are allowed to die because they fall outside the scope of the convention 'living', simply because there is no obligation to protect their lives, or so it seems.

The element of conflict is discussed and assessed in chapters 7, 8 and 9; the element of scope in chapters 10 and 11.

In chapter 7 it is argued that the conflict between 'living' and 'avoiding (the infliction of) pain' did not begin to exist - as some say - with the medical-technical abilities and knowledge developing. On the contrary, the conflict has been in existence since at least the early twentieth century.

Chapter 8 gives a discussion of the various solutions presented for this conflict. First the solutions are discussed of the reformer Singer, the so-called pro-lifers (those who wish to use a medical criterion and who reject considerations concerning the 'quality of life' and involvement of the parents' wishes) and the moderates (those who do not reject involving the parents and who wish to use the principles of 'quality of life' or best interest as criteria). The solutions are assessed against the background of the entire system of values. The solution of a number of moderates - those who use the principle of best interest - is favoured the most. With this in mind the conflict-part of the termination of life of newborns is then assessed in chapter 9. The most important conclusions are that:

1. medical experts have to put the principle of best interest into operation;
2. parents should only have a say in the termination of life of newborns insofar as they make their own interests subservient to the conventions and to the interests of their child;
3. the latter should only apply to those rare cases in which 'living' and 'avoiding (the infliction of) pain' are of equal weight.

It is also argued that the difference between killing someone and allowing someone to die is morally relevant, that we have to be extremely careful with relation to killing and that the principle of the double effect - pain relief with the foreseen but unintended (side) effect of accelerating death - is a usable principle.

In the last part of the ninth chapter Kekes' theory is applied to three other problem areas. It appears this theory can without question be used for the assessment of the termination of life of children and the mentally handicapped (to the latter groups the same applies, mutatis mutandis, as to the group of newborns). For the problem of late termination of pregnancy it is concluded: on the assumption that unborn children do not suffer due to their afflictions, the conflict between 'living' and 'avoiding (the infliction of) pain' does not apply here and therefore a late termination of pregnancy is unjustifiable.

In chapters 10 and 11 the scope of the convention 'living' is discussed in connection with anencephalic babies, but especially also in connection with patients in a persistent vegetative state (and severely mentally handicapped people). It appears that not treating anencephalic babies can always be justified. Either we are certain that these babies will never have the potential for consciousness, in which case they fall outside the order-part of the

convention 'living' and we are not obliged to protect their lives; or we are not certain about their potential for consciousness. In that case, however, the conflict between 'living' and 'avoiding (the infliction of) pain' is applicable and the latter should override.

With relation to patients in a persistent vegetative state the argument is that if we know for certain that the potential for consciousness is permanently absent, they, just as anencephalic babies, fall outside the scope of the order-part of the convention 'living'. We may allow them to die, if necessary even by discontinuing the artificial nutrition and hydration.

If we are uncertain about the absence of the potential for consciousness in a patient, then the order-part of 'living' and also of 'avoiding (the infliction of) pain' is applicable. Since such patients usually do not need to undergo painful treatment, the convention 'avoiding (the infliction of) pain' does not need to, or hardly needs to be violated - in order to keep them alive - and therefore the convention 'living' should override. This means that we have an obligation to keep these patients alive continually. From Kekes' point of view this solution is - assuming there is uncertainty with regards to the ability of consciousness - inevitable. But many say this solution is undesirable. The only way out of this impasse is not a continuation of the moral discussion, but an attempt at greater certainty concerning the facts, i.e. concerning the possible absence of the potential for consciousness in patients in a persistent vegetative state (the same applies to severely mentally handicapped people, mutatis mutandis).